IRWAN AMAT

v.

PP

COURT OF APPEAL, PUTRAJAYA
AHMAD MAAROP JCA
SULAIMAN DAUD JCA
BALIA YUSOF WAHI JCA
[CRIMINAL APPEAL NO: B-05-57-2009]
12 OCTOBER 2011

CRIMINAL LAW: *Murder - Conviction and sentence - Appeal against - Whether death caused by accused - Whether injuries inflicted with intention of killing deceased - Corroboration of eye witnesses - Sufficient evidence showing accused as person stabbing the deceased - Appellant's conduct of absconding - Whether indicative of a guilty mind - Evidence Act 1950, s. 8 - Whether prosecution proved a prima facie case of murder against appellant*

EVIDENCE: *Dying declaration - Admissibility - Deceased identifying accused as his attacker - Whether trial judge correct in admitting evidence - Evidence Act 1950, s. 32(1)(a)*

The appellant ('Irwan') was accused of murdering one Jibal Salim ('Jibal') on 16 October 2003 at the parking area between the Anggerik Block and the Cempaka Block, Country Homes ('the Country Homes'), Rawang. In the trial in the High Court, the learned trial judge had found the appellant guilty due to the following reasons (i) witnesses had testified that they saw the appellant stabbing Jibal; (ii) there was a dying declaration by Jibal and (iii) there was evidence showing the appellant disappearing from his residence at the Country Homes and was arrested only some two years later. The appellant appealed and submitted that the trial judge erred in rejecting the appellant's defence which was that Jibal had died not because of the appellant's act, but because of the act of other individual or individuals from the many persons involved in a fight that had taken place at the material time.

Held (dismissing the appellant's appeal; affirming conviction and sentence)
Per Ahmad Maarop JCA:

(1) The nature, extent and location of the injuries inflicted on Jibal as well as the type of weapon used to inflict those injuries led to the inevitable conclusion that the injuries which

A caused Jibal's death were inflicted with the intention of killing Jibal. It was futile for the person who stabbed Jibal several times on the abdomen with a sharp instrument causing, amongst other things, to say on being accused, that he had no intention of killing Jibal. The angry utterance by the
B appellant "Awak ikut campur-saya bunuh kamu" as he plunged the sharp instrument into Jibal's abdomen was also evidence of his intention to kill Jibal. The injuries were caused with the intention of causing bodily injuries which would be sufficient in the ordinary course of nature to cause death. (para 9)

C

(2) PW1's testimony as to what happened on the day in question was corroborated by the evidence of two other eye-witnesses – PW4 and PW5. PW4 and PW5 had positively identified the appellant in the identification parades held by the police as the
D person stabbing Jibal with a sword several times. The trial judge had accepted their evidence as credible, which he was entitled to do as a judge. The totality of the evidence of PW1, PW4 and PW5 proved that it was the appellant who had stabbed Jibal on the abdominal area several times using a sharp
E instrument causing the latter's death. (para 10)

(3) There was evidence from Jibal's brother (PW6) that he had gone to the scene where he saw Jibal lying on the road bleeding from the neck and stomach and was still alive. The answer "Irwan" by Jibal in response to PW6's question as to
F who caused the injuries, was admissible as a dying declaration under s. 32(1)(a) of the Evidence Act 1950. The learned trial judge was correct in admitting that evidence. (para 11)

(4) The piece of evidence which was relevant under s. 8 of the
G Evidence Act 1950 and was properly thrown into the scale by the trial judge was the evidence of PW11 and PW12 showing the appellant's conduct in absconding from the Country Homes. PW12's evidence revealed that some two years later, the appellant had fled the police when told to stop by the
H latter. The appellant was arrested after a car chase. That evidence was indicative of the appellant's guilty mind. The trial judge was correct when he found that the prosecution had proved a *prima facie* case of murder as charged against the appellant. (para 11)

I

(5) The trial judge had adequately considered the appellant's defence and tested it with the evidence of the prosecution witnesses, in particular PW1, PW4 and PW5. The trial judge found that there were two fights on the night in question. In the first, the appellant was attacked triggering the second attack in which the appellant together with several persons who were armed with wood, parangs, swords and knives returned to the scene and attacked Jibal and PW4. The appellant's evidence had not created any doubt on the prosecution's case. The prosecution had proved its case of murder against the appellant beyond reasonable doubt. (para 14)

Bahasa Malaysia *Translation Of Headnote*

Perayu ('Irwan') telah dituduh membunuh satu Jibal Salim ('Jibal') pada 16 Oktober 2003 di kawasan letak kereta di antara Anggerik Block dan Cempaka Block, Country Homes ('Country Homes'), Rawang. Di dalam perbicaraan di Mahkamah Tinggi, yang arif hakim bicara mendapati perayu bersalah atas alasan-alasan berikut (i) saksi-saksi telah menyatakan bahawa mereka melihat perayu menikam Jibal; (ii) terdapatnya pernyataan nazak oleh Jibal dan (iii) terdapat keterangan yang menunjukkan perayu menghilangkan diri dari tempat kediamannya di Country Homes dan telah ditahan dua tahun kemudian. Perayu merayu dan berhujah bahawa hakim bicara khilaf dalam menolak pembelaan perayu bahawa Jibal telah meninggal dunia bukan kerana perbuatan perayu, tetapi kerana perbuatan seseorang individu atau individu-individu lain yang terlibat di dalam suatu pergaduhan yang telah berlaku pada masa yang material itu.

Diputuskan (menolak rayuan perayu; mengesahkan sabitan dan hukuman)
Oleh Ahmad Maarop JCA:

(1) Sifat, sejauh mana dan lokasi kecederaan yang dikenakan ke atas Jibal serta jenis senjata yang digunakan untuk mengenakan kecederaan-kecederaan tersebut membawa kepada kesimpulan yang tidak boleh dielakkan bahawa kecederaan-kecederaan tersebut yang telah menyebabkan kematian Jibal telah dikenakan dengan niat untuk membunuh Jibal. Ia adalah sia-sia untuk orang itu menikam Jibal beberapa kali pada bahagian abdomen dengan alat yang tajam menyebabkan, antara lain, untuk mengatakan apabila dituduh, bahawa beliau tidak

A mempunyai niat untuk membunuh Jibal. Pengucapan secara marah oleh perayu "Awak ikut campur – saya bunuh kamu" ketika beliau menjunam alat tajam ke dalam abdomen Jibal adalah keterangan yang menunjukkan niat beliau untuk membunuh Jibal. Kecederaan-kecederaan akibat niat untuk
B menyebabkan kecederaan-kecederaan ke atas badan adalah memadai dalam keadaan biasa untuk menyebabkan kematian.

(2) Testimoni PW1 mengenai apa yang telah terjadi pada hari yang berkenaan disokong oleh keterangan dua lagi saksi –
C PW4 dan PW5. PW4 dan PW5 telah dengan positif mengenal pasti perayu di perbarisan cam yang diadakan oleh pihak polis sebagai orang yang menikam Jibal dengan pedang beberapa kali. Hakim bicara telah menerima keterangan mereka sebagai boleh dipercayai, yang mana beliau berhak melakukan sebagai
D seorang hakim. Keseluruhan keterangan PW1, PW4 dan PW5 membuktikan bahawa perayu telah menikam Jibal pada bahagian abdomen beberapa kali dengan menggunakan alat yang tajam menyebabkan kematian simati.

E **(3)** Terdapat keterangan dari abang Jibal (PW6) bahawa beliau telah pergi ke tempat kejadian di mana beliau melihat Jibal terbaring atas jalan raya dengan pendarahan dari leher dan perut dalam keadaan masih hidup. Jawapan "'Irwan"' telah diberi oleh Jibal apabila PW6 menyoalnya mengenai siapa yang
F telah menyebabkan kecederaan-kecederaan ke atasnya, diterima-masuk sebagai pernyataan nazak di bawah s. 32(1)(a) Akta Keterangan 1950. Yang arif hakim bicara betul dalam menerima keterangan itu.

(4) Cebisan bukti yang relevan di bawah s. 8 Akta Keterangan
G 1950 dan telah dibawa ke dalam skala oleh hakim bicara adalah keterangan PW11 dan PW12 yang menunjukkan tindakan perayu melarikan diri dari Country Homes. Keterangan PW12 menunjukkan bahawa dua tahun kemudian, perayu telah melarikan diri dari polis apabila disuruh berhenti
H oleh mereka. Perayu ditangkap selepas keretanya dikejar. Keterangan tersebut menunjukkan minda bersalah perayu. Hakim bicara betul apabila mendapati pihak pendakwaan telah membuktikan kes *prima facie* bunuh seperti yang dituduh terhadap perayu.

I

(5) Hakim bicara telah mempertimbangkan dengan secukupnya pembelaan perayu dan mengujinya dengan keterangan saksi-saksi pihak pendakwaan, khususnya PW1, PW4 dab PW5. Hakim bicara mendapati bahawa pada malam berkenaan berlakunya dua pergaduhan. Dalam pergaduhan pertama, perayu diserang yang telah mencetuskan serangan kedua di mana perayu bersama-sama dengan beberapa orang lain bersenjatakan kayu, parang, pedang dan pisau kembali ke tempat kejadian dan menyerang Jibal dan PW4. Keterangan perayu tidak mewujudkan sebarang keraguan ke atas kes pendakwaan. Pihak pendakwaan telah membuktikan kes bunuh terhadap perayu melampaui keraguan yang munasabah.

Case(s) referred to:
Andy Bagindah v. PP [2000] 3 CLJ 289 CA
Dato' Mokhtar Hashim & Anor v. PP [1983] 2 CLJ 10; [1983] CLJ (Rep) 101 FC
Kumaran Sappani v. PP [2011] 3 CLJ 251 FC
Lai Kim Hon & Ors v. PP [1980] 1 LNS 197 FC
Mohamed Alias v. PP [1981] 1 LNS 200 HC
PP v. Datuk Hj Harun Hj Idris [1976] 1 LNS 96 HC
PP v. Megat Shahrizat Megat Shahrur [2011] 5 CLJ 608 CA
Tan Buck Tee v. PP [1961] 1 LNS 130 HC

Legislation referred to:
Evidence Act 1950, ss. 8, 32(1)(a)

For the appellant - Bernard George; M/s Tay, Bernard & Cheong
For the respondent - Tengku Amir Zaki Tengku Abdul Rahman DPP

Reported by Suhainah Wahiduddin

JUDGMENT

Ahmad Maarop JCA:

Introduction

[1] The appellant – Irwan b. Amat ("Irwan") was accused of murdering of one Jibal b. Salim ("Jibal") at about 9.45pm on 16 October 2003 at the parking area between the Anggerik Block and the Cempaka Block, Country Homes ("the Country Homes"), Rawang, Selangor. In the trial in the High Court three eye – witnesses testified that they saw Irwan stabbing Jibal. There was

A evidence of a dying declaration by Jibal. There was evidence showing Irwan disappearing from his residence at the Country Homes and was arrested only some two years later. Irwan denied killing Jibal. Was the learned trial judge right in finding Irwan guilty of the murder, convicting him and sentencing him to death?

B

The Prosecution's Case

[2] On the night in question at about 8pm, Muhammad Yan b. Abdullah (PW1), a resident of the Dahlia Apartment, Cempaka Block, at the Country Homes was talking to his friend Mohd C Noor on the ground floor of the apartment at a place between the Cempaka and the Kekwa Blocks, when a group of people armed with wood, parang and axes attacked Irwan who was having conversation with two other persons about 10 meters away from PW1. Irwan managed to escape. PW1 telephoned the police, D as a result of which Sgt Ahmad Latfi b. Hamzah (PW3) came to the scene to investigate about 5 minutes later. Having found nothing, PW3 returned to his police post located at the Country Homes. PW1 and his friend then moved to a stall near the Cempaka Block for a drink. While he was having his drink at the E stall, PW1 saw several cars entering the parking area. A group of people including Irwan came out of the cars armed with parangs, samurai swords, knives and wood. PW1 could see Irwan and the group as the scene was lighted by the street lights as well as lights from the food stalls. The group proceeded towards the Anggerik F Block and then pandemonium broke out. PW1 saw three persons falling down. PW1 saw Irwan dragging out one of the three persons who had fallen. Irwan sat on the body of that person and stabbed him repeatedly on the stomach using a sharp weapon. PW1 heard Irwan saying, "Awak ikut campur – saya bunuh kamu" G as he was stabbing that person. PW1 identified the person stabbed as Jibal. Later, Irwan and the group of persons who came to the scene with him ran away. PW1 telephoned PW3 again and informed the latter of the fight. PW3, who received the telephone call at about 11pm rushed to the scene. Jibal was then rushed to H the Selayang Hospital.

[3] At the Selayang Hospital, immediate surgery was conducted on Jibal. According to Dr. Taufiq b. Abdullah (PW14), the surgeon who conducted the surgery on Jibal together with Dr. Lim Kin I Foong, on external examination, he found the following injuries on Jibal:

(a) 9 stab wounds on the anterior of the abdomen;

(b) laceration wound on the right cheek measuring 5cm in length and 15cm across the front neck;

(c) sub-mandibular laceration wound – 9cm; and

(d) laceration wound along the left posterior axillary – 4cm above the waist.

[4] On internal examination, PW14 found the following injuries:

1. Multiple perforations of the small bowel (intestines) ranging from 0.5cm to 1.5cm caused by the stab wounds. There were more than 15 perforations.

2. Multiple small intestines mesenteric laceration.

3. 2 perforations at the sigmoid colon (large intestines) measuring 1cm and 0.6cm respectively.

4. Huge laceration of the left netroperitoneum 3cm.

5. Both the right and left ureter partially transected at midureter level with urine leak.

6. Active oosing from retro peritoneum.

[5] According to PW14, the injuries inflicted on Jibal, (which in PW14's view were caused by sharp instrument), especially injuries to the retroperitoneum areas had caused him to lose massive amount of blood – which would lead to hypovolemic shock resulting in reduced perfusion to the organs. This would lead to acidosis, coagulapathy and multi organ failure. PW14 opined that although septicaemia also contributed to Jibal's death – in that germs from the faeces had entered the blood, nevertheless even without septicaemia, death would have been inevitable because of the massive loss of blood. In PW14's view, the injuries inflicted on Jibal were sufficient in the ordinary cause of nature to cause his death. PW14 also testified that no post-mortem was done on Jibal because the cause of death had been established from the surgery and this, according to PW14 was an accepted practice.

[6] Dr. Mohd. Hamdan bin Abd. Wahab (PW2) who had Jibal under his care after the surgery, testified that Jibal succumbed to his injuries at about 11.28pm on 17 October 2003. In the medical report (P3) prepared by him, PW2 certified Jibal's death to be due to coagulopathy secondary to massive blood loss secondary to multiple stab wounds.

[7] On 17 October 2003, at about 12.30am, Asp Mohd Fazley b. Ab. Rahman (PW11) who was informed of the fight at the Country Home, rushed to Irwan's house at No. 02-03, Kekwa Block of the Country Homes with a police team. Irwan was then the suspect in the incident. PW11 and his team broke open the door and entered the house. There was nobody in the house. From the master bedroom PW11 obtained three photographs and particulars of Irwan. On 20 October 2003 Asp Navamani a/l Chellapen (PW13) the Investigation Officer of the case circulated Irwan's photograph in the police wanted list.

[8] On 25 October 2005 at about 1.10am C/Insp Mohd Suhaimi Sadimon (PW12) and 3 policemen were on a crime prevention round in the police patrol car at the Taman Rashna area Jalan Batu 3 Klang. He noticed a Proton Aeroback No. JGV 9720 being driven in a suspicious manner – it made U turns 2 - 3 times. PW12 drew level with the said Proton, wound down the screen of the patrol car window and told the driver of the Proton to stop. The driver did not stop the car, but sped off instead. PW12 gave chase. After a one kilometre chase PW12 managed to stop the Proton Aeroback and apprehended Irwan who was driving the car. Upon enquiries PW12 found that Irwan was wanted in the incident at the Country Homes.

[9] From the evidence of Kamal b. Salim (PW6) Jibal's brother, PW2 and PW14, the learned trial judge was satisfied that Jibal's identity and the fact of his death had been proven. On the evidence of PW2 and PW14, the learned judge found the cause of Jibal's death to be coagulapathy due to massive blood loss due to stab wounds. The nature, extent and location of the injuries inflicted on Jibal as well as the type of weapon (sharp instrument) used to inflict those injuries revealed by the evidence of PW14 and PW2, led the learned judge to the inevitable conclusion (and in our view rightly) that the injuries which caused Jibal's death were inflicted with the intention of killing Jibal. In our view, it

would be futile for the person who stabbed Jibal several times on the abdomen with a sharp instrument causing multiple perforations on the small and large intentines, huge laceration on the left netroperitoneum and transection of both the right and left ureter in the circumstances of this case, to say on being accused, that he had no intention of killing Jibal. Indeed the angry utterance by Irwan, "Awak ikut campur – saya bunuh kamu" as he plunged the sharp instrument into Jibal's abdomen is also evidence of his intention to kill Jibal. As the learned judge opined, at the very least the injuries were caused with the intention of causing bodily injuries which would be sufficient in the ordinary course of nature to cause death (see *Tan Buck Tee v. PP* [1961] 1 LNS 130, *Kumaran Sappani v. PP* [2011] 3 CLJ 251, *PP v. Megat Shahrizat Megat Shahrur* [2011] 5 CLJ 608).

[10] The next question before the court was whether Jibal's death was caused by or in consequence of Irwan's act. In this regard as found by the learned trial judge, PW1's testimony as to what happened on the day in question was corroborated by the evidence of the two other eye-witnesses – Abdil b. Zul (PW4) and his wife Jambon b. Haddmi (PW5). PW1, PW4 and PW5 had positively identified Irwan in the identification parades held by the police. Subsequently, they also identified Irwan in the court when they testified. Indeed, according to PW1 and PW5 they knew Irwan before the incident which was not surprising as Irwan was one of the residents of the Country Homes. PW4 and PW5 were residents of Anggerik Block of the Country Homes. On the day in question at about 10pm PW4 and PW5 were having their drink at a stall located between the Kekwa Block, Anggerik Block and another block. PW4 testified that as he was walking back to his house from the stall, he heard sound of person falling down. He turned back and saw Irwan stabbing Jibal and another person (Abdin) with a sword several times. Irwan then also attacked PW4 with the same sword causing injuries on PW4's arms. PW5 testified that she saw Irwan stabbing Jibal with a knife many times on the latter's body. Then Irwan chased her and PW4. PW4 told PW5 to run away. PW5 also saw Irwan attacking PW4 with a knife. In evaluating the evidence of the three eyes witnesses, the learned trial judge considered the contradictions in their evidence with regard to matters such as the time of the incident and the type of weapon used by Irwan. Having done so he found that the

contradictions did not affect the essence of their evidence. He accepted their evidence as credible, which he was entitled to do as a trial judge (see *Mohamed Alias v. PP* [1981] 1 LNS 200, *PP v. Datuk Hj Harun Hj Idris* [1976] 1 LNS 96, *Lai Kim Hon & Ors v. PP* [1980] 1 LNS 197, *Dato' Mokhtar Hashim & Anor v. PP* [1983] 2 CLJ 10; [1983] CLJ (Rep) 101), and concluded that the totality of the evidence of PW1, PW4 and PW5 proved that it was Irwan who stabbed Jibal on the abdominal area several times using a sharp instrument causing the latter's death. We agree.

[11] The evidence against Irwan did not end there. There was evidence from Jibal's brother Kamal b. Salim (PW6) resident of the Anggerik Block of the Country Homes. On being informed by one Zamran that Jibal was attacked, PW6 went to the scene where he saw Jibal lying on the road bleeding from the neck and stomach. At that time Jibal was still alive. PW6 asked Jibal, "kenapa kena tikam?". Jibal said "tidak tahu puncanya". PW6 asked Jibal who caused the injuries. Jibal replied "Irwan". This evidence was unchallenged by the defence. PW6 knew Irwan one year before the incident and he identified Irwan in court. The answer "Irwan" by Jibal in response to PW6's question as to who caused the injuries, was admissible as a dying declaration under s. 32(1)(a) of the Evidence Act 1950. The learned trial judge was right in admitting that evidence. The other piece of evidence which was relevant under s. 8 of the Evidence Act 1950, and was properly thrown into the scale by the learned trial judge was the evidence of PW11 and PW12 showing Irwan's conduct in absconding from the Country Homes. PW12's evidence revealed that some two years later, Irwan fled from the police when told to stop by the latter. Irwan was arrested after a car chase. That evidence in the learned's judge view, was indicative of Irwan's guilty mind. We agree with him.

[12] In the light of all the evidence which we have set out and for reasons which we have given, we hold that the learned judge was right when he found that the prosecution had proved a *prima facie* case of murder as charged against Irwan.

Decision

[13] In his submission before us learned counsel for Irwan informed us that he was not attacking the finding of *prima facie* case made by the learned trial judge. Learned counsel's sole complaint before us was that the learned trial judge erred in

rejecting Irwan's defence. He submitted that Irwan's evidence was consistent on what actually happened on the day in question. He contended that the irrefutable evidence established that on 16 October 2003 there was a big fight at the Country Homes involving many people and that Jibal was one of the victims fatally injured in the fight. He argued that Jibal died not because of Irwan's act, but because of the act of other individual or individuals from the many persons involved in the fight. This bring us to Irwan's defence. Irwan gave evidence on oath. The substance of his evidence is clearly set out in the judgment of the learned trial judge and we will not repeat it. As rightly found by the learned trial judge, Irwan's evidence was diametrically opposed to that of the eye witnesses – PW1, PW4 and PW5. The essence of Irwan's defence was denial. He admitted that he had resided in the Kekwa Block of the Country Home four months before the incident. He admitted being present at the scene at the material time and in fact he claimed he himself and his friend Om were attacked by a group of Indonesians and Filipinos resulting in injuries to his stomach. However, Irwan said he did not know Jibal. He admitted that he was involved in the fight but denied killing Jibal. In fact he said he did not stab anybody. He said he had taken his wife and child to Puchong to save them.

[14] We found that the learned trial judge had adequately considered Irwan's defence and tested it with the evidence of the prosecution witnesses in particular PW1, PW4 and PW5. In this regard, the learned judge found that PW1's evidence that after the first fight, (in which Irwan was attacked), Irwan returned to the scene with several other persons was never challenged by the defence. The learned judge found that PW4's evidence that he was attacked by Irwan and PW5's evidence that Irwan attacked PW4 were also never challenged by the defence. Those were among the matters which were taken into account by the learned judge when he deliberated on Irwan's evidence. The learned judge found that there were two fights on the night in question. In the first, Irwan was attacked which triggered the second attack in which Irwan together with several persons who were armed with wood, parangs, swords and knives returned to the scene in several cars and attacked Jibal and PW4. In the end, the learned judge found that Irwan's evidence had not created any doubt on the prosecution's case. He concluded that the prosecution had proved its case of murder against Irwan beyond reasonable doubt.

[15] The conclusions of the learned judge as aforesaid were based on his finding on the credibility or otherwise of the prosecution witnesses particularly PW1, PW4 and PW5, on one hand and that of Irwan on the other, in respect of which, his views as the trial judge is entitled to great respect. The appellate court is always slow to interfere in such findings of fact made by the learned judge. (See, *Andy Bagindah v. PP* [2000] 3 CLJ 289). In order to reverse the decision of the learned trial judge on such matters we must, not merely entertain doubt whether his decision was right, but be convinced that it was wrong (See *Dato' Mokhtar b. Hashim & Anor v. PP* [1983] 2 CLJ 10; [1983] CLJ (Rep) 101). Having carefully scrutinised the evidence on record which appears to us overwhelming and having carefully examined the judgment of the learned trial judge, and for reasons which we have set out, we are not convinced that his decision was wrong.

[16] In the result, Irwan's appeal is dismissed. The conviction and sentence on him are affirmed.